

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DONN MICHAEL’S SALON, INC.	:	
	:	
v.	:	NO:
	:	
NATIONWIDE MUTUAL FIRE	:	
INSURANCE COMPANY	:	

NOTICE OF REMOVAL

AND NOW, comes the defendant, Nationwide Mutual Fire Insurance Company (“Nationwide”) for the purpose of filing a notice of removal of this case to the United States District Court for the Middle District of Pennsylvania, and respectfully avers as follows:

I. PROCEDURAL HISTORY AND PARTIES

1. This is a civil action filed and currently pending in the Court of Common Pleas of Luzerne County, Pennsylvania, Docket No. 2021-01852.
2. Plaintiff, Donn Michael’s Salon, Inc., initiated this action by filing a Writ of Summons on February 26, 2021. See Exhibit A, Writ of Summons.
3. On March 12, 2021, plaintiff voluntarily dismissed all claims against former defendant, M Garnett Enterprises Inc.. See Exhibit B, Praeceptum to Dismiss.
4. Plaintiff filed a complaint on October 5, 2021. See Exhibit C, Complaint.

5. The Writ of Summons was served by certified mail, received on March 10, 2021; and this notice of removal is filed less than thirty days after the filing of the Complaint. See Exhibit D, Certificate of Service of Complaint.

6. The averments made herein are true and correct with respect to the date and time upon which suit was commenced, the date upon which service was completed, and the date upon which this notice is filed.

7. Removing defendant seeks to remove this matter to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C § 1332 and 28 U.S.C. § 1446(b).

II. DIVERSITY OF CITIZENSHIP EXISTS

8. The Complaint alleges that Plaintiff is “a corporation and/or other business entity organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business located at 217 S. Main Street, Wilkes-Barre, PA 18701.” See Exhibit C at ¶ 1.

9. The Pennsylvania Department of State business entity search indicates that Donn Michael’s Salon, Inc. is a Pennsylvania domestic business corporation with the registered address at 184 Dana Street, Wilkes-Barre, Pa 19702.

10. Accordingly, the plaintiff is a citizen of the Commonwealth of Pennsylvania for purposes of determining diversity of citizenship.

11. Nationwide Mutual Fire Insurance Company is now, and was at the time Plaintiff commenced this action, a corporation organized under the laws of the

State of Ohio, with its principal place of business at One Nationwide Plaza, Columbus, Ohio, 43215. Therefore, Nationwide, is a citizen of the State of Ohio for purposes of determining diversity.

12. All claims against former defendant, M. Garnett Enterprises, Inc., have been voluntarily dismissed by the plaintiff. See Exhibit B.

13. Consequently, complete diversity of citizenship exists between the only remaining parties to this action.

II. ALLEGATIONS OF PLAINTIFF'S COMPLAINT

14. Plaintiff's complaint seeks recovery for Nationwide's handling and denial of a claim plaintiff submitted on its commercial property insurance policy for lost business income allegedly resulting from the closure of plaintiff's salon pursuant to the Governor of Pennsylvania's orders issued in response to the COVID-19 Pandemic.

15. Plaintiff alleges the Governor's orders forced its business to close, resulting in "substantial Business Income losses and incurred Extra Expense" that is alleged "owed under the [Nationwide] Policy and increasing every day." See, Exhibit C at ¶ 46.

16. Plaintiff alleges that Nationwide's denial of benefits was incorrect, and asserts claims for declaratory judgment (Count I), Breach of Contract (Count II), and Bad Faith under 42 Pa. Cons. Stat.. Ann. § 8371 (Count III) against Nationwide. See, Exhibit C at ¶¶ 69-88.

17. The complaint seeks a declaration that both “losses incurred” and “losses to be incurred” in the future are covered under the policy. See, Exhibit C at ¶ 74.

18. The complaint further alleges that due to Nationwide’s conduct in handling the claim, plaintiff was forced to incur “legal fees, costs, and lost interest” along with “economical loss, emotional discomfort and humiliation, financial hardship and financial losses.” See Exhibit C at ¶ 66.

III. AMOUNT IN CONTROVERSY

19. The amount in controversy in this matter clearly exceeds the jurisdictional limit of \$75,000.00, exclusive of interest and costs.

20. Although plaintiff’s complaint does not allege the precise amount of business income losses it allegedly sustained, Count II of the complaint seeks both “actual and consequential damages” in excess of \$50,000.00.

21. These compensatory damages not only include losses previously incurred in the past, but losses “to be incurred,” at an unspecified time into the future. See Exhibit C at ¶ 74. Therefore, the compensatory losses allegedly sustained are “increasing every day.” See Exhibit C at ¶ 46.

22. The bad faith claim in Count III additionally seeks interest on the claims equal to the prime interest rate plus three percent, costs and attorney's fees, and punitive damages as permitted by law¹. See Exhibit C at ¶ 88.

23. Punitive damages such as those authorized by 42 Pa. Cons. Stat. Ann. § 8371 are a permissible way to bridge the jurisdictional gap with respect to the amount in controversy. Bell v. Preferred Life Assurance Society, 320 U.S. 238, 240-41 (1943); Fine v. State Farm Fire Cas. Co., No. 93-1618, 1993 U.S. Dist. LEXIS 7682 at **3-4 (E.D. Pa. 1993).

24. Thus, plaintiff's claim for compensatory damages in excess of \$50,000.00 under Count II, plus punitive damages under Count III clearly establish that the amount in controversy exceeds \$75,000.00.

IV. REQUEST FOR REMOVAL

25. Removing Defendant, therefore, asserts that the amount in controversy in this matter exceeds \$75,000.00, the Plaintiff and Defendant are citizens of different states, and this Notice of Removal was timely filed less than thirty days after the filing of the complaint.

26. Removing Defendant has simultaneously, with the filing of this notice, given written notice to the Plaintiff and his counsel.

¹ A statutory bad faith claim under 42 Pa. Cons. Stat. Ann. § 8371, as set out in Count III, authorizes the Court to award (1) "interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest, plus 3%," (2) "punitive damages against the insurer;" and (3) "court costs and attorney's fees against the insurer." 42 Pa. Cons. Stat. Ann. § 8371.

27. Removing Defendant is also filing a copy of the instant notice of removal and all attachments thereto with the Prothonotary of the Court of Common Pleas of Luzerne County.

WHEREFORE, Defendant, Nationwide Mutual Fire Insurance Company, hereby requests removal of this suit to this Honorable Court pursuant to the laws of the United States.

Respectfully submitted,

BENNETT, BRICKLIN & SALTZBURG LLC



By: _____

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Attorney for Defendant

Date: November 3, 2021

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DONN MICHAEL'S SALON, INC.	:	
v.	:	
NATIONWIDE MUTUAL FIRE	:	NO:
INSURANCE COMPANY	:	

NOTICE

TO: Donn Michael's Salon, Inc.
c/o Scott B. Cooper, Esquire
209 State Street
Harrisburg, PA 17101

PLEASE TAKE NOTICE, that defendant, Nationwide Mutual Fire Insurance Company, has filed in this Court a verified Notice for Removal of the State Court action, Donn Michael's Salon Inc., v. Nationwide Mutual Fire Insurance Company, now pending in the Court of Common Pleas of Luzerne County, Pennsylvania, Docket No. 2021-0182.

PLEASE TAKE FURTHER NOTICE that a certified copy of the Notice of Removal will be filed with the Prothonotary of the Court of Common Pleas of Luzerne County, Pennsylvania.

BENNETT, BRICKLIN & SALTZBURG LLC



BY: _____
NICHOLAS A. CUMMINS
Attorney I.D. No. 203238
Attorney for Defendants

Date: November 3, 2021

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**DEFENDANT'S CERTIFICATION OF FILING OF COPY
OF NOTICE OF REMOVAL WITH STATE COURT**

Nicholas A. Cummins, being duly sworn according to law, deposes and says that he is a Member of the law firm of Bennett, Bricklin & Saltzburg LLC, attorneys for defendants, Nationwide Mutual Fire Insurance Company, and that he did direct the filing with the Prothonotary of Luzerne County a copy of the Notice of Removal attached hereto, said filing to be made on this date by electronic filing.

BENNETT, BRICKLIN & SALTZBURG LLC

BY:  _____

NICHOLAS A. CUMMINS
Attorney I.D. No. 203238
Attorney for Defendant

Date: November 3, 2021

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CERTIFICATE OF SERVICE

Nicholas A. Cummins, after being first duly sworn upon oath, deposes and says that he is a Member of the law firm of Bennett, Bricklin & Saltzburg LLC, attorneys for the defendant, Nationwide Mutual Fire Insurance Company, and that he did serve on this date, the aforementioned Notice to plaintiffs upon the individual named below by electronic mail to:

Scott B. Cooper, Esquire
209 State Street
Harrisburg, PA 17101
scooper@schmidtkramer.com

BENNETT, BRICKLIN & SALTZBURG LLC



BY: _____
NICHOLAS A. CUMMINS
Attorney I.D. No. 203238
Attorney for Defendants

Date: November 3, 2021

AFFIDAVIT

I, Nicholas A. Cummins, being duly sworn according to law, do hereby depose and state that I am the attorney for Defendant, Nationwide Mutual Fire Insurance Company, the Petitioner in the foregoing Notice of Removal, that I have been duly authorized by the Petitioners to execute this Affidavit, that I am familiar with the facts involved in this matter, and that the allegations set forth in the foregoing Notice of Removal are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



NICHOLAS A. CUMMINS

DATE: November 3, 2021